

STATE OF MISSOURI
MISSOURI BOARD OF PHARMACY

IN RE:

MISSOURI CVS PHARMACY, LLC
d/b/a CVS PHARMACY #8577
4400 NW Barry Road
Kansas City, MO 64154
Permit No. 2006015623

Complaint No. 2015-003543

**SETTLEMENT AGREEMENT BETWEEN MISSOURI
BOARD OF PHARMACY AND MISSOURI CVS PHARMACY, LLC
CVS PHARMACY #8577**

Come Now Missouri CVS Pharmacy, LLC d/b/a CVS Pharmacy #8577 ("Respondent" or "CVS Pharmacy #8577") and the Missouri Board of Pharmacy ("Board" or "Petitioner") and enter into this Settlement Agreement for the purpose of resolving the question of whether Respondent's permit to operate a pharmacy will be subject to discipline.

Pursuant to the terms of Section 536.060, RSMo, the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the Board under Section 621.110, RSMo, and stipulate and agree that a final disposition of this matter may be effectuated as described below.

Respondent acknowledges that it understands the various rights and privileges afforded it by law, including the right to a hearing of the charges against it; the right to appear and be represented by counsel; the right to have all charges against it proved upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against it; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against it and, subsequently, the right to a disciplinary hearing before the Board at which time it may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against its

permit. Being aware of these rights provided it by operation of law, Respondent knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document, as they pertain to it.

Respondent acknowledges that it has received a copy of the draft complaint to be filed with the Administrative Hearing Commission, the investigative report, and other documents relied upon by the Board in determining there was cause for discipline against Respondent's permit.

For the purpose of settling this dispute, Respondent stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Board that Respondent's permit to operate a pharmacy, numbered 2006015623, is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621 and Chapter 338, RSMo

JOINT STIPULATION OF FACTS

1. The Board is an agency of the State of Missouri created and established pursuant to Section 338.110, RSMo (2016)¹, for the purpose of executing and enforcing the provisions of Chapter 338, RSMo.

2. Respondent CVS Pharmacy #8577 Pharmacy, 4400 NW Barry Road, Kansas City, Missouri, is permitted by the Board under permit number 2006015623. Respondent's permit was at all times relevant herein current and active.

3. On or around July 8, 2015, the Board received a DEA loss report from the Pharmacy indicating that pharmacy technician D.C. had admitted to stealing at least 20 bottles of alprazolam 2mg, 20 bottles of promethazine with codeine and 360 tablets of Tylenol with codeine #3.

¹ All statutory references are to the Revised Statutes of Missouri 2000, as amended, unless otherwise stated.

4. The July 8, 2015 notice detailed other losses which the Pharmacy also believed the technician had stolen, to-wit:

Drug / Strength	Amount Lost
acetaminophen-codeine #3 ² tablets	471 tablets
alprazolam ³ 0.25mg tablets	303 tablets
alprazolam 0.5mg tablets	655 tablets
alprazolam 1mg tablets	456 tablets
alprazolam 2mg tablets	3,171 tablets
promethazine with codeine syrup ⁴	13,043 mL

5. The Board was notified by a Technician Discipline Form that the Pharmacy had terminated D.C.'s employment on June 25, 2015 for theft.

6. Board Inspector Andi Miller investigated the losses on behalf of the Board.

7. During her investigation she learned that the Pharmacy became aware of suspected losses on May 27, 2015. However, on May 26, 2015, the CVS Regional Loss Prevention Manager received a report showing possible losses of alprazolam 2mg and promethazine with codeine for the period of August 29, 2014 through April 30, 2015.

8. D.C. was hired on or about October 18, 2014.

9. After several adjustments to video surveillance cameras were made, surveillance footage on June 23, 2015, showed D.C. removing promethazine from the shelf, placing it in an empty box and taking it out of camera range. It also showed him removing a bottle alprazolam 2 mg from the shelf just before his shift ended and concealing it in his pants.

10. When confronted on June 25, 2015, D.C. admitted to:

A. stealing a bottle of alprazolam 2mg from the Pharmacy on June 24, 2015 by putting it in his pocket;

² Tylenol with codeine #3 is a brand name for acetaminophen with codeine #3 and is a Schedule III controlled substance pursuant to §195.017.6(4)(a), RSMo.

³ Alprazolam is a Schedule IV controlled substance. §195.017.8(2)(a), RSMo.

⁴ Promethazine with codeine syrup is a Schedule V controlled substance. §195.017.10(1)(b), RSMo

B. stealing approximately 20 bottles of alprazolam 2mg from the Pharmacy between February 2015 and June 24, 2015, by concealing an entire stock bottle in his pants pocket;

C. stealing a bottle of promethazine with codeine syrup from the Pharmacy on June 23, 2015;

D. stealing approximately 20 bottles of promethazine with codeine syrup from the Pharmacy between February 2015 and June 23, 2015 by either putting the entire stock bottle in his pocket or pouring some into another bottle and putting that bottle in his pocket;

E. stealing two bottles of Tylenol #3 from the Pharmacy in November 2014;

F. knowingly violating the law;

G. stealing drugs to treat his own back and knee pain; and

H. stealing drugs to sell them.

11. The Pharmacy is required to maintain adequate security controls to prevent the loss or diversion of controlled substances, to-wit:

(1) All applicants and registrants shall provide effective controls and procedures to guard against theft and diversion of controlled substances. In order to determine whether a registrant has provided effective controls against diversion, the Department of Health shall use the security requirement set forth in 19 CSR 30-1.032, 19 CSR 30-1.034 as standards for the physical security controls and operating procedures necessary to prevent diversion. Substantial compliance with these standards may be deemed sufficient by the Department of Health after evaluation of the overall security system and needs of the applicant or registrant.

(2) Physical security controls shall be commensurate with the schedules and quantity of controlled substances in the possession of the registrant in normal business operations. If a controlled substance is transferred to a different schedule, or a noncontrolled substance is listed on any schedule, or the quantity of controlled substances in the possession of the registrant in normal business operations significantly increases, physical security

controls shall be expanded and extended accordingly. 19 CSR 30-1.031(1)-(2).

12. In order to prevent diversion, the Pharmacy is required to provide additional security for controlled substances, to-wit:

(1) Physical Security

(A) Controlled substances listed in Schedules I and II shall be stored in a securely locked, substantially constructed cabinet.

(B) Controlled substances listed in Schedules III, IV and V shall be stored in a securely locked, substantially constructed cabinet. However, pharmacies may disperse these substances throughout the stock of noncontrolled substances in such a manner as to obstruct the theft or diversion of the controlled substance. 19 CSR 30-1.034(1).

13. In addition to the general pharmacy security requirements, federal law has additional requirements for adequate security in the storage and distribution of controlled substances, to wit:

(a) All applicants and registrants shall provide effective controls and procedures to guard against theft and diversion of controlled substances. In order to determine whether a registrant has provided effective controls against diversion, the Administrator shall use the security requirements set forth in §§1301.72-1301.76 as standards for the physical security controls and operating procedures necessary to prevent diversion. Materials and construction which will provide a structural equivalent to the physical security controls set forth in §§1301.72, 1301.73 and 1301.75 may be used in lieu of the materials and construction described in those sections. 21 CFR §1301.71(a).

14. Federal law further requires that:

(b) Controlled substances listed in Schedules II, III, IV and V shall be stored in a securely locked, substantially constructed cabinet. However, pharmacies and institutional practitioners may disperse such substances throughout the stock of noncontrolled substances in such a manner as to obstruct the theft or diversion of the controlled substances. 21 CFR §1301.75(b).

15. Respondent failed to provide adequate security or effective controls and

procedures to detect and prevent theft of its controlled substances resulting in the loss of controlled substances over the course of several months in violation of 19 CSR § 30-1.031(1)-(2), 19 CSR § 30-1.034(1), 21 CFR §1301.71(a), and 21 CFR §1301.75(b).

JOINT CONCLUSIONS OF LAW

16. Cause exists for Petitioner to take disciplinary action against Respondent's pharmacy permit under 20 CSR § 2220-2.010(1)(H) and (O), which provides:

(H) Pharmacies must maintain adequate security in order to deter theft of drugs by personnel or the public. Sufficient alarm systems or locking mechanisms must be in place if the pharmacy is located in a facility into which the public has access and the pharmacy's hours of operation are different from those of the remainder of the facility.

* * *

(O) When a pharmacy permit holder knows or should have known, within the usual and customary standards of conduct governing the operation of a pharmacy as defined in Chapter 338, RSMo, that an employee, licensed or unlicensed, has violated the pharmacy laws or rules, the permit holder shall be subject to discipline under Chapter 338, RSMo.

17. Cause exists for Petitioner to take disciplinary action against Respondent's pharmacy permit under §338.210.5, RSMo, which states:

5. If a violation of this chapter or other relevant law occurs in connection with or adjunct to the preparation or dispensing of a prescription or drug order, any permit holder or pharmacist-in-charge at any facility participating in the preparation, dispensing, or distribution of a prescription or drug order may be deemed liable for such violation.

18. Cause exists for Petitioner to take disciplinary action against Respondent's pharmacy permit under Section 338.055.2, RSMo, which states in relevant parts:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit or license for any one or any combination of the following causes:

* * *

(5) Incompetence, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

* * *

(13) Violation of any professional trust or confidence;

* * *

(15) Violation of the drug laws or rules and regulations of this state, any other state or the federal government

JOINT AGREED DISCIPLINARY ORDER

Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of Section 621.045.3, RSMo:

A. Respondent's license, Permit No. 2006015623, is hereby **PUBLICLY CENSURED.**

B. The terms of this Settlement Agreement are contractual, legally enforceable, binding, and not merely recitals. Except as otherwise contained herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

C. Respondent, together with its heirs and assigns, and its attorneys, does hereby waive and release the Board, its members and any of its employees, agents, or attorneys,

including any former board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including, but not limited to any claims for attorney's fees and expenses, including any claims pursuant to Section 536.087, RSMo, or any claim arising under 42 U.S.C. Section 1983, which may be based upon, arise out of, or relate to any of the matters raised in this litigation, or from the negotiation or execution of this Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this Settlement Agreement in that it survives in perpetuity even in the event that any court of law deems this Settlement Agreement or any portion thereof void or unenforceable.

RESPONDENT, AS EVIDENCED BY THE INITIALS ON THE APPROPRIATE LINE,

_____ REQUESTS
✓ _____ DOES NOT REQUEST

THE ADMINISTRATIVE HEARING COMMISSION TO DETERMINE IF THE FACTS SET FORTH HEREIN ARE GROUNDS FOR DISCIPLINING RESPONDENT'S PERMIT TO OPERATE AS A PHARMACY.

If Respondent has requested review, Respondent and Board jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Respondent's license and issue findings of fact and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Respondent's license. Effective fifteen (15) days from the date the Administrative Hearing Commission determines that the Settlement Agreement sets forth cause for disciplining Respondent's license, the agreed upon discipline set forth herein shall go into effect.

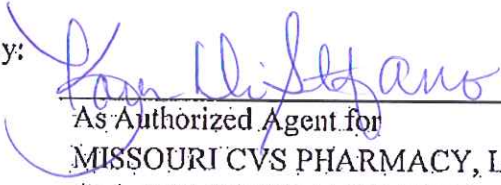
If Respondent has not requested review by the Administrative Hearing Commission, the Settlement Agreement goes into effect fifteen (15) days after the document is signed by the Board's Executive Director.

The parties to this Agreement understand that the Board of Pharmacy will maintain this Agreement as an open record of the Board as provided in Chapters 324, 338, 610, RSMo.

RESPONDENT

MISSOURI CVS PHARMACY, LLC
d/b/a CVS PHARMACY #8577

By:


As Authorized Agent for
MISSOURI CVS PHARMACY, LLC
d/b/a CVS PHARMACY #8577

Printed:

Karen DiStefano, Director
Pharmacy Reg Affairs

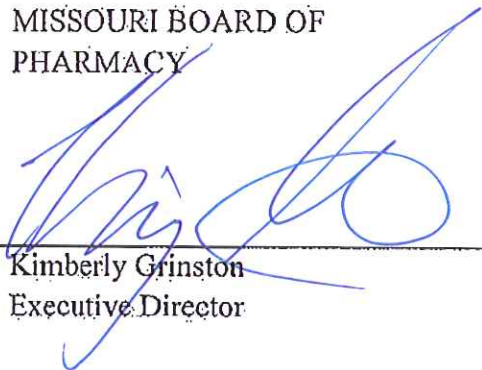
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PETITIONER

MISSOURI BOARD OF
PHARMACY

By:

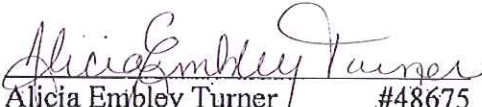

Kimberly Grinston
Executive Director

Date:

4-12-18

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